INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	4
Statement	4
Argument	8
Conclusion	14
Appendix	15

CITATIONS

Cases:

Fresh Meadow Country Club v. *United States*, 17 F. Supp. 400	11
International Brotherhood of Electrical Workers v. *National Labor Relations Board*, 181 F. 2d 34, affirmed, 341 U. S. 694	13
Jefferson County Farm Bureau v. *Sherman*, 208 Iowa 614, 226 N. W. 182	11
Matter of Monroe Chapter, 132 Misc. 109, 228 N. Y. Supp. 248	11
National Labor Relations Board v. *Radio Officers' Union*, 30 LRRM 2103 (C.A. 2, May 6, 1952)	13
Union Starch & Refining Co. v. *National Labor Relations Board*, 186 F. 2d 1008, certiorari denied, 342 U. S. 815	9

Statutes:

Act of October 22, 1951, 65 Stat. 601	16
Labor Management Relations Act, 1947 (61 Stat. 136, 29 U.S.C., Supp. IV, 141 *et seq.*):	
Section 302 (a)	18
Section 302 (c) (4)	11, 18
National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. IV, 151, *et seq.*):	
Section 7	15
Section 8 (a) (1)	15
Section 8 (a) (3)	11, 15
Section 8 (b) (1)	17
Section 8 (b) (2)	2, 3, 9, 11, 17
Section 8 (c)	3, 17

Miscellaneous:

93 Cong. Rec. 3837, 4887	9
S. Rep. No. 105, 80th Cong., 1st Sess., pp. 6-7	9
S. Rep. No. 986, pt. 3, 80th Cong., 2d Sess., pp. 104-106	11

In the Supreme Court of the United States

OCTOBER TERM, 1952

Nos. 124 and 140

THE ELECTRIC AUTO-LITE COMPANY, AND LOCAL 12, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below, incorporated in its judgment (R. 281), is not officially reported. The decision and order of the Board (R. 67) are reported at 92 NLRB 1073.

JURISDICTION

The judgment of the court below (R. 281) was entered on April 17, 1952. Petitions for rehearing filed by both petitioners on May 2, 1952 (R. 283, 289), were denied on May 13, 1952 (R. 295). The petitions for writs of certiorari were filed by Electric Auto-Lite Company (hereafter called the Company) and Local 12, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (hereafter called the Union), on June 13 and 19, 1952, respectively. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and under Section 10 (e) and (f) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

Under Section 8 (b) (2) of the amended Act, a labor organization is permitted to cause or attempt to cause the discharge of an employee, pursuant to a union-security agreement, only if his membership in the organization has been denied or terminated for failure to pay "periodic dues and the initiation fees uniformly required." The employee here involved failed to pay certain charges imposed by the Union upon members who failed to attend union meetings; the Union diverted the employee's checked-off dues to the payment of these charges and thereafter caused his discharge on the ground that he was delinquent in his dues. The questions presented in No. 140 are as follows:

1. Whether Section 8 (b) (2) permits a labor organization to cause or attempt to cause the dis-

charge of an employee for nonattendance at a union meeting.

2. Whether a charge imposed by a union for nonattendance at a union meeting is comprehended by the term "periodic dues * * * uniformly required" as used in Section 8 (b) (2).

3. Whether a union may, without regard to the wishes of the employee involved, apply his checked-off dues to the payment of such a charge, leaving the employee delinquent in dues and vulnerable to discharge.

4. Whether substantial evidence supports the Board's finding that employee Eck did not authorize the Union to apply his checked-off dues to the payment of the charge levied against him for nonattendance at a union meeting.

5. Whether a union's request that an employer discharge an employee pursuant to a union-security agreement is protected by Section 8 (c) as a noncoercive expression of "views, argument, or opinion."

6. Whether substantial evidence supports the Board's finding that it was the petitioning union, rather than its constituent unit, which made the unlawful request for Eck's discharge.

The sole question presented in No. 124 is whether substantial evidence supports the Board's finding that the Company had reasonable grounds for believing that employee Eck's membership in the Union was terminated for reasons other than his failure to pay "periodic dues * * * uniformly required" and, therefore, that by discharging Eck

at the Union's request the Company violated Section 8 (a) (3) of the Act.[1]

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended, and of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), are set forth in the Appendix, *infra*, pp. 15-18.

STATEMENT

Upon the usual proceedings under Section 10 of the National Labor Relations Act, as amended, the Board, on December 29, 1950, issued its findings of fact, conclusions of law, and order. The pertinent facts, as found by the Board, may be summarized as follows:

On May 27, 1948, the Company entered into a valid collective bargaining agreement providing that all its employees who had theretofore, or would thereafter, join the Auto-Lite Unit of the Union would be required to remain members in good standing as a condition of continued employment (R. 32; 222).[2] Prior thereto, Melvin Eck and a

[1] The second question stated by the Company (Co. Pet., pp. 3-4) is merely a restatement of the factual issue raised in its first question.

[2] The Union, which was certified as the exclusive bargaining representative of the Company's employees (10 NLRB 665), is an "amalgamated" local composed of about 60 units, including the Auto-Lite Unit. Membership in the Unit constitutes membership in the Union. The Union maintains the membership records of the Unit, collects all dues, fines and assessments, and remits to the Unit its share of such monies. The Union admitted that it had the sole responsibility for the administration of the maintenance-of-membership provision of the agreement (R. 33; 178-179, 188, 192, 199).

number of other employees who were members of the Union had executed check-off cards authorizing the Company to deduct from their earnings each month, and to pay over to the "Financial Secretary of Local 12, UAW-CIO," the "sum of one dollar and fifty cents", plus certain assessments not involved in this proceeding (R. 35; 142-143, 234). This sum was exactly equal to the amount of the dues prescribed in the UAW [3] constitution, and the Company admitted that it considered this sum to represent the monthly dues payable by each member (R. 70; 146, 276).

Pursuant to Eck's authorization, the Company regularly deducted $1.50 from his wages each month and transmitted this sum to the Union (R. 35; 145). Nevertheless, the Union in December 1948 suspended Eck on the ground that he was in arrears in dues. The Union's action was based on the fact that Eck had not attended several union meetings earlier that year, and had paid only a part of the charges levied against him by the Union because of his absences (R. 36; 197-198, 205, 208). These charges were levied pursuant to a motion, adopted by the Auto-Lite Unit in order to encourage attendance at meetings, increasing the dues from $1.50 to $2.00 a month, but exonerating members who attended meetings from paying the 50 cent increase (R. 38; 166-167, 180-181, 191). To avoid making the additional payments, members

---

[3] United Automobile, Aircraft and Agricultural Implement Workers of America, the Union's parent body.

who attended meetings were required to fill out attendance cards which described the additional charge as "a 50 cent assessment . . . for nonattendance" (R. 167, 279).

The UAW's constitution, which expressly provided that dues should be $1.50 a month (R. 276), authorized local unions to levy "fines" for nonattendance at meetings (R. 277-278). The Chairman of the Auto-Lite Unit referred to the 50 cent charge as a "fine" or "assessment" (R. 167, 181), and Eck considered it a fine rather than dues (R. 112-113).

Upon Eck's suspension, the financial secretary of the Union, Randolph Gray, sent him a notice that the Union was applying his checked-off dues to his unpaid fines, and that he would be expected to correct his record (R. 36; 116, 279). When Eck failed to respond to this notice, Gray on January 12, 1949, advised the Company that Eck and a number of other employees were "delinquent in the payment of their dues" and requested their discharge under the maintenance-of-membership provision of the collective bargaining agreement (R. 35; 226).

Although the Company had never been notified of the non-attendance charge (R. 183), and although its own records showed that Eck's dues had been regularly checked off (R. 49; 147), the Company nevertheless advised Eck that the Union had requested his discharge and that he had a two-week grace period from January 12, 1949, in which to correct his delinquency (R. 36; 235). Eck received

the Company's letter on January 15 and mistakenly concluded that his grace period would expire two weeks from that date, *i.e.*, on January 29, before which time he intended to adjust his arrears (R. 36; 119). When the grace period actually expired on January 26, the Union advised the Company that Eck's arrears had not been corrected and referred to its earlier letter requesting his discharge (R. 36-37; 232). Upon receipt of this information, the Company promptly discharged Eck (R. 36-37; 233). At no time, however, did it ever make any inquiry concerning the basis for the alleged dues delinquency, but admittedly relied solely on the Union's statement that Eck was in arrears in dues (R. 37; 146-148, 153-156).

The Board, one member dissenting, found that the 50 cent fine for nonattendance at meetings did not constitute "periodic dues . . . uniformly required" within the meaning of Section 8(a)(3) and 8(b)(2) of the amended Act, and rejected the contention that Eck had authorized the Union's diversion of his checked-off dues to the payment of unpaid fines. Accordingly, the Board found that Eck's membership in the Union was terminated on some ground other than his failure to tender periodic dues, and that by causing the Company to discharge Eck therefor, the Union had violated Section 8(b)(2) and 8(b)(1)(A) of the amended Act. The Board further found that the Union's request for Eck's discharge was the cause for such discharge and that the request did not constitute a

noncoercive expression of views, argument or opinion protected by Section 8(c) of the Act (R. 46-48, 67). Finally, the Board rejected the Union's contention that, in requesting Eck's discharge, the Union's financial secretary was acting solely on behalf of the Auto-Lite Unit and not on behalf of the Union (R. 34, 67).

With respect to the Company, the Board found that, by complying with the Union's demand for Eck's discharge, the Company had violated Section 8(a)(3) and (1) of the amended Act, since the Company's own checkoff records provided reasonable grounds for believing that Eck's membership in the Union had been terminated for reasons other than arrears in dues (R. 49-50, 73-74). Accordingly, the Board ordered the Company and the Union to cease and desist from the unfair labor practices found and to reinstate Eck with back pay (R. 76-78).

The court below held, *per curiam*, that "the findings of the Board are supported by substantial evidence on the record, considered as a whole," and decreed enforcement of the Board's order "for the reasons set forth in its decision and order" (R. 281).

ARGUMENT

1. The Union, petitioner in No. 140, recognizes (Pet. 8) that the fundamental question upon which it is asking this Court to pass is whether, under the amended Act, a union is free "to use a union security clause for the purpose of obtaining a dis-

charge for the failure of an employee to attend a union meeting". We agree that, if it were substantial, this question would be of importance to labor organizations generally. We believe, however, that the terms of the Act and its legislative history leave no room for doubt that the question was properly resolved by the Board and the court below. Accordingly, since the decision below is clearly correct and since there is no conflict, we submit that review by this Court is unnecessary.

(a). Section 8(b)(2) of the Act unambiguously forbids a labor organization to cause an employer to discriminate against an employee for nonmembership in the organization except in a single situation —where the employee has been expelled from membership or denied membership for nonpayment of dues or initiation fees. Manifestly, nonattendance at a union meeting is not the equivalent of nonpayment of dues or initiation fees. It follows that to cause the discharge of an employee for nonattendance at meetings is barred by the Act.

This conclusion, required by the plain terms of the Act, is reaffirmed by the legislative history, which shows that Congress intended to sanction the use of union-security agreements only to eliminate so-called "free riders," *i. e.*, members who refused to pay their fair share of the expenses of maintaining their union. *Union Starch & Refining Co.* v. *National Labor Relations Board,* 186 F. 2d 1008, 1010 (C. A. 7), certiorari denied, 342 U. S. 815; S. Rep. No. 105, 80th Cong., 1st Sess., pp. 6-7; 93 Cong. Rec. 3837, 4887. Congress could have seen fit to

adopt the petitioning Union's suggestion (Pet. 15-16) that the class of "free riders" against which discrimination could lawfully be directed should include "those who seek to get the benefits of the organization without assuming * * * the responsibility of participating in the decisions." Instead, Congress chose in Section 8(b)(2) to immunize a union causing employer discrimination only where the employees affected fail "to tender the periodic dues and the initiation fees uniformly required * * *." This immunity, an exception to the Act's general policy of permitting employees either to refrain from or to participate in union activities without fear of loss of jobs, was properly confined to its statutory terms by the Board and the court below.

(b). The Union further contends in effect that it should be permitted to evade the Congressional policy against causing the discharge of employees for nonattendance at union meetings by disguising fines imposed for nonattendance as "dues." But it scarcely requires extended discussion to show that, as the Board and the court below held, Congress did not intend to permit unions to accomplish by indirection what it precluded them from accomplishing directly. The dispositive point here is that the payments involved are not "dues" within the meaning of the statute. Significant in this connection is the fact that the UAW constitution expressly contemplates the levying of "fines" for nonattendance

at union meetings (*supra*, p. 6);[4] the levies here in issue were "fines," as the Union's witness himself admitted (*ibid.*). It is clear that the charges were adopted to encourage attendance at union meetings rather than to raise revenue, and therefore do not fall within the normal conception of "dues."[5] Moreover, since the charges were payable only by those who did not attend meetings, they did not satisfy the express statutory requirement of uniformity.[6]

2. The Union's contention (Pet. 17-19) that in any event Eck was discharged for dues delinquency rather than for failure to pay the fine rests upon the fallacious assumption that, pursuant to provisions in its constitution, a union may, without regard to the actual wishes of individual members,

---

[4] The definition of "dues" in the UAW constitution, which includes "special fees" (Pet. 13), was initially adopted shortly after Congress enacted Section 8(b)(2) to prevent unions from causing the discharge of employees suspended from membership for reasons other than failure to pay dues or initiation fees. Compare the UAW constitution adopted March 6, 1946, with the 1947 constitution (R. 276).

[5] *Fresh Meadow Country Club* v. *United States*, 17 F. Supp. 400, 401 (E.D.N.Y.); *Matter of Monroe Chapter*, 132 Misc. 109, 115, 228 N. Y. Supp. 248, 255; *Jefferson County Farm Bureau* v. *Sherman*, 208 Iowa 614, 619, 226 N. W. 182, 185.

[6] The exemption of "membership dues" from the provisions of Section 302, which prohibits the payment of money by an employer to the representatives of his employees, is entirely different both in scope and in purpose from the exemption of "periodic dues and the initiation fees uniformly required" in Section 8(b)(2) and 8(a)(3). Consequently, the Department of Justice interpretation of the phrase "membership dues" in Section 302(c)(4), upon which petitioner relies (Pet. 16), does not support petitioner's construction of the very different phrase used in Section 8(b)(2). S. Rep. 986, pt. 3, 80th Cong., 2d Sess., pp. 104-106.

apply to the payment of fines for nonattendance at meetings sums which the members have authorized to be deducted from their wages in payment of dues, thereby leaving the members liable to discharge for dues delinquency. So to hold "would permit rights guaranteed by the Act to be brushed aside by the artful drafting and interpretation of union constitutions and by-laws." *National Labor Relations Board* v. *Radio Officers' Union,* 30 LRRM 2103 (C. A. 2, May 6, 1952).

To the extent that the Union challenges the Board's finding that Eck did not in fact authorize the use of his checked-off dues in payment of the fine, the challenge poses merely a question of substantial evidence, properly decided below which does not warrant further review.[7]

3. The sole question presented in the Company's petition (No. 124)—whether substantial evidence supports the Board's finding that the Company, when it discharged Eck, had reasonable grounds for believing that his membership in the Union had

---

[7] Petitioner's argument (Pet. 21), that a union's request for the discharge of an employee pursuant to a union-security contract may not be held to "cause" or be an "attempt to cause" illegal discrimination, because it is a noncoercive "expression of views, argument or opinion" and hence protected by Section 8 (c), is palpably fallacious, and has uniformly been rejected by the courts. *National Labor Relations Board* v. *Radio Officers' Union, supra; I. B. E. W.* v. *National Labor Relations Board,* 181 F. 2d 34, 38 (C. A. 2), affirmed, 341 U. S. 694. The Union's further contention (Pet. 19) that the discrimination against Eck was not caused by the Union, but by its constituent Auto-Lite Unit, raises only a question of fact which, as the evidence shows (*supra,* pp. 4, n. 2, 6-7), was properly decided adversely to the Union by the trial examiner, the Board, and the court below.

been terminated for reasons other than his failure to tender the periodic dues uniformly required as a condition of retaining such membership—is entirely factual and hence does not warrant review by this Court. In any event, the record fully sustains the finding of the trial examiner and the Board, approved by the court below. As the evidence shows (*supra*, pp. 5, 6, 7), the Company knew that all of the check-off authorizations, like Eck's, contemplated payments of $1.50 per month; it also knew from its own records that this amount had regularly been deducted from Eck's earnings and paid to the Union; and it was never notified that the Union had applied Eck's check-off money to the payment of the fine which had been levied against him. On these undisputed facts there was ample warrant for the finding that the Company had reasonable grounds for believing that the Union's request was grounded in something other than a mere failure to pay dues.

There is no basis for the Company's assertion that it is required, pursuant to the Board's decision in this case, to inquire into the Union's internal affairs. The statute imposes upon the employer the obligation to refrain from discharging an employee at the request of a union if the employer has reasonable grounds for believing that the employee's membership has been terminated for reasons other than failure to pay dues. The instant case holds only that where such reasonable grounds exist, the employer may not escape his statutory duty to refrain from discrimination by accepting as con-

clusive a union's mere assertion that dues delinquency is the reason for termination of membership.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petitions for writs of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.

GEORGE J. BOTT,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

MOZART G. RATNER,
Assistant General Counsel,

MAURICE ALEXANDRE,
Attorney,
National Labor Relations Board.

JULY, 1952.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Supp. IV, Sec. 151, *et seq.*), are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, main-

tained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;[8]

* * * * *

[8] Since this case arose, the Act has been amended to eliminate the requirement of an election to authorize a union-security agreement—an amendment which has no bearing on the questions presented. Act of October 22, 1951, 65 Stat. 601.

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * * * *

The relevant provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. IV, 141, *et seq.*), are as follows:

> SEC. 302. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
>
> * * * * *
>
> (c) The provisions of this section shall not be applicable * * * (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; * * *

☆ U. S. GOVERNMENT PRINTING OFFICE: 1953 914674